

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

MERIDIAN HOMES and
EDWARD GRAHAM
Respondents

Case No. I-00-10642

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01– 2-1802.05) and Title 21 Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-10642) served on June 15, 2001, the Government charged Respondents Meridian Homes and Edward Graham with violations of the following regulations: 21 DCMR 506.2 (failure to comply with an approved erosion and sedimentation plan); 21 DCMR 538.1(k) (failure to establish temporary cover by seeding or mulching graded areas); 21 DCMR 539.4 (failure to place adequate erosion control measures before and during exposure) (two separate violations are cited); 21 DCMR 539.5 (allowing period of exposure exceeding one hundred twenty (120) days); and 21 DCMR 539.6 (failure to provide temporary or permanent stabilization during or after rough grading). The Notice of Infraction alleged that the

violations occurred on June 13, 2001, at 5515 Potomac Avenue, N.W., and fines in the total amount of \$600 were sought.

Respondents filed a timely plea of Admit with Explanation, together with a request for suspension or reduction of the proposed fines. Respondents state that they are in the home building business in the Washington Metropolitan area and that they build about ten homes each year. They represent that they have never been fined for a building violation. Respondents admit they violated the regulations as charged in the Notice of Infraction, but they attribute this to delays in obtaining permits from the Government, which they contend adversely affected their ability to expeditiously complete the work, including the grading and landscaping of the site. According to Respondents, it took the Government several months to resolve an internal jurisdictional dispute regarding the approval of a storm water management device constructed by Respondents on the site before a permit was issued. Respondents admit that “the site remained denuded” during this time. In addition, Respondents assert that the storm water management work on the site and in the public right of way was delayed unnecessarily for more than 120 days because of problems in obtaining a Public Access permit that was needed to close a public street. Respondents claim that during this time they diligently maintained and repaired a silt fence that was part of the erosion and sedimentation control measures, but, despite their diligent efforts, they were not able to police the property constantly to make sure the silt fence was always in good order. At the time the Notice of Infraction was served, the various problems causing delays had been resolved and Respondents were in a position to proceed with the work.

The Government responds that Respondents’ explanation does not justify the suspension or reduction in the fines. The Government asserts that the problems relating to the approval of the storm water management device on the site and the obtaining of a Public Access permit were

unrelated to the erosion and sedimentation plan and, therefore, these alleged problems had no affect on Respondents' ability to comply with the plan. In addition, the Government states that a re-inspection of the site was made on July 9, 2001, and the Respondents were not in compliance as of that date.

II. Findings of Fact

1. By their plea of Admit with Explanation, Respondents have admitted that on June 13, 2001, at 5515 Potomac Avenue, N.W., they violated the following regulations:
 - a. 21 DCMR 506.2, by failing to comply with an approved erosion and sedimentation plan;
 - b. 21 DCMR 538.1(k), by failing to establish temporary cover by seeding or mulching graded areas;
 - c. 21 DCMR 539.4, by failing to place adequate erosion control measures before and during exposure;¹
 - d. 21 DCMR 539.5, by allowing a period of exposure exceeding 120 days;and

¹ Two separate violations of 21 DCMR 539.4 are cited in the Notice of Infraction. It is not apparent whether the charging of two violations of 539.4 was intended. If there was an error, this was waived by Respondents by their plea of Admit with Explanation. *DOH v. Multi-Therapeutic Services, Inc.*, OAH No. I-00-40335 (Final Order, October 29, 2001).

- e. 21 DCMR 539.6, by failing to provide temporary or permanent stabilization during or after rough grading.
2. There is no evidence in the record of a history of non-compliance by Respondents.

III. Conclusions of Law

Respondents violated 21 DCMR 506.2, 21 DCMR 538.1(k), 21 DCMR 539.4 (two violations), 21 DCMR 539.5, and 21 DCMR 539.6 on June 13, 2001. The fine for the first violation of each of these regulations is \$100. 16 DCMR 32342(c); 16 DCMR 3234.2 (w); 16 DCMR 3234.2(y); 16 DCMR 3234.2 (z); and 16 DCMR 3234.2(aa).

While the problems experienced by Respondents in obtaining permits may have affected the overall progress of the work on the project, nevertheless, they do not excuse the Respondents' non-compliance with the requirements of the approved erosion and sedimentation plan. Indeed, the implementation of erosion and sedimentation control measures is especially important in situations such as the present one where, for whatever reason, an area is left denuded for an extended period of time. Also, it is apparent that Respondents did not take prompt action to correct the violations after the Notice of Violation was served, when it is not disputed they were not experiencing any work delays because of problems with obtaining Government permits. These factors do not warrant the suspension or reduction of the proposed fines. However, because there is no evidence in the record of a history on non-compliance by Respondents, I will reduce the fines to a total of \$500. *See* D.C. Official Code §§ 2-1802(a)(2) and 2-1801.03(b)(6); 18 U.S.C. §3553; U.S.S.G. §3E1.1.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is this ____ day of _____, 2002:

ORDERED, that Respondents Meridian Homes and Edward Graham, jointly and severally, shall pay a total of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions, within twenty (20) calendar days of the date of mailing of this order (fifteen (15) calendar days plus five (5) days for service by mail, pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount within twenty (20) calendar days of the date of mailing of this order, by law, interest will accrue on the unpaid amount at the rate of 1 ½% per month, or portion thereof, beginning with the date of this order. D.C. Official Code § 2-1803(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits, pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real or personal owned by Respondents, pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites, pursuant to D.C. Official Code § 2 -1801.03(b)(7).

/s/ **05/02/02**

Robert E. Sharkey
Administrative Judge